

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE BOARD OF MEDICAL PRACTICE

In the Matter of the Medical License  
of Diane B. Humenansky, M.D.  
Date of Birth: 10-8-35  
License No.: 32,069

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above-entitled matter is before Administrative Law Judge Steve M. Mihalchick on Respondent's entry of a plea of no contest to the factual basis for the allegations made in the Notice of and Order for Hearing in this matter. Jacquelyn E. Albright, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103-2106, appeared on behalf of the Complaint Review Committee (Committee) of the Minnesota Board of Medical Practice (Board). Philip G. Villaume, Philip G. Villaume & Associates, International Plaza, 7900 International Drive, Suite 675, Bloomington, Minnesota 55425, appeared on behalf of Respondent Diane B. Humenansky, M.D. The record was closed on November 6, 1996, upon receipt of a stipulated exhibit from Ms. Albright.

**NOTICE**

Notice is hereby given that, under Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Board. Exceptions to this Report, if any, shall be filed with the Board at University Plaza, 2829 University Avenue S.E., Minneapolis, Minnesota 55414-3246. Under Minn. Stat. § 214.10, subd. 2, a board member who was consulted during the course of an investigation may participate at the hearing, but may not vote on any matter pertaining to the case.

**STATEMENT OF ISSUES**

Given the Respondent's entry of a plea of no contest to the factual allegations in this matter, the only remaining issues are whether Respondent's conduct constitutes violation of Minn. Stat. § 147.091, subd. 1, and if so, what is the appropriate sanction to be imposed by the Board.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. On May 17, 1995, the Board issued its Findings of Fact, Conclusions, and Order to Respondent, concluding that it had probable cause to order Respondent to submit to a mental and physical examination pursuant to Minn. Stat. § 147.091, subd. 6(a). The Order also suspended Respondent's license to practice medicine and surgery in Minnesota, but stayed that suspension on condition that she comply with a previously issued Order for Mental and Physical Examination by submitting to such an examination within 60 days. The Findings of Fact, Conclusions and Order of March 17, 1995, are a part of the record in this matter pursuant to stipulation of counsel.

2. On July 1, 1996, the Committee issued a Notice of and Order for Hearing in this matter. It contained the following allegations and violations:

### **ALLEGATIONS**

The grounds for disciplinary action are as follows:

1. In approximately 1992, the Board initiated an investigation into Respondent's medical practice after receiving numerous complaints regarding Respondent and her ability to practice medicine. To date, the Board has received twenty (20) complaints against Respondent which allege multiple violations of the Medical Practice Act.

2. After thorough investigation of this matter, the Board determined that probable cause existed to believe that Respondent was unable to practice medicine with reasonable skill and safety to patients due to a mental or physical condition. Consequently, the Board ordered Respondent to submit to a mental and physical examination, pursuant to Minn. Stat. § 147.091, subd. 6(a).

3. From April 17 through April 21, 1995, Respondent underwent the board ordered mental and physical evaluation at the Menninger Clinic in Topeka, Kansas. The assessment team diagnosed Respondent, in part, as follows:

Axis II:301.9 Personality Disorder NOS with dependent and avoidant features (PD).

\* \* \*

Axis IV: Current GAF: 55  
Highest GAF Past Year: 55

4. Upon discharge, evaluation staff at the Menninger Clinic recommended that Respondent:

a. Work in a structured environment which includes opportunity for supervision and peer review and dialogue, and where clear clinical expectations and ongoing medical education are available.

b. Upgrade her continuing medical education. Specifically, it was recommended that Respondent receive education in the areas of addictions, psychopharmacology and prescribing practices, medical malpractice/practice management, and ongoing psychotherapy

supervision with particular emphasis on transference/counter-transference issues.

c. Participate in psychotherapy to further her own psychological growth and development.

d. Be restricted from working with Dissociative Identity Disorder patients.

5. On July 31, 1995, a Ramsey County jury found Respondent negligent in failing to meet the recognized medical standards in the diagnosis, care and treatment of patient #1 and that such failing was a direct cause of harm or injury to patient #1. The jury awarded patient #1 and her family in excess of two million dollars for damages caused by Respondent.

6. On January 24, 1996, a Ramsey County jury found Respondent negligent in failing to meet the recognized medical standards in the diagnosis, care and treatment of patient #2 and that such failing was a direct cause of harm or injury to patient #2. The jury awarded patient #2 and her family in excess of two million dollars for damages caused by Respondent.

7. In or about June 1996, Respondent's insurance company agreed to out-of-court settlements with four former patients who had accused Respondent of planting false memories of abuse. To date, there are four more false memory lawsuits pending against Respondent.

### **VIOLATIONS**

The foregoing conduct would constitute:

1. Engaging in unethical conduct in violation of Minn. Stat. § 147.091, subd. 1(g).
2. Engaging in unprofessional conduct in violation of Minn. Stat. § 147.091, subd. 1(k).
3. An inability to practice medicine with reasonable skill and safety to patients in violation of Minn. Stat. § 147.091, subd. 1(1).

3. The Committee and Respondent engaged in diligent efforts to resolve the matter by agreement. Those negotiations ultimately proved unsuccessful. On October 22, 1996, Respondent prepared a letter to counsel for the Committee under which she surrendered and resigned her license to practice medicine in Minnesota. Respondent's counsel advised against surrender of the license, but Respondent insisted that he deliver the letter to counsel for the Committee, which he did. The letter of October 22, 1996, is a part of the record pursuant to stipulation of counsel.

4. On October 29, 1996, a conference was held at the Office of Administrative Hearings with both counsel and Respondent present to discuss the surrender of Respondent's license and other options. Respondent indicated that she is

not and never has been mentally ill, but does not wish to go through the rigors of a contested case. She and her counsel had assumed that if she did surrender her license or entered a plea of no contest, the Board would revoke her license to practice medicine. It was explained to her that if she did enter a plea of no contest to the allegations, the Board would still have all of its disciplinary options available and she would be entitled to argue appropriate discipline to the Board. Respondent requested and was granted a few days to consider her options of entering a plea of no contest or of proceeding to a contested case on the allegations. On November 1, 1996, in a telephone conference with counsel for the Committee and counsel for Respondent, counsel for Respondent advised the Administrative Law Judge that Respondent had decided to enter a no contest plea to the factual basis of the allegations.

5. Respondent does not admit the allegations made in the Notice of and Order for Hearing, but by virtue of her entry of a plea of no contest, they are deemed proven. Therefore, the allegations are taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Board and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 147.091, and 214.10.

2. The Board has given proper notice of the hearing in this matter and has fulfilled all relevant substantive and procedural requirements of law.

3. The Board has the authority to take disciplinary action against physicians, including the Respondent, under Minn. Stat. §§ 147.01 to 147.36, 214.10 and 214.103.

4. The allegations deemed proven in this matter do not constitute unethical conduct in violation of Minn. Stat. § 147.091, subd. 1(g).

Minn. Stat. § 147.091, subd. 1(g), lists three types of conduct which constitute grounds for discipline: (1) Unethical conduct, (2) conduct likely to deceive or harm the public or demonstrating willful disregard for a patient, and (3) medical practice which is professionally incompetent. The allegations deemed proven in this matter demonstrate professional incompetence, not unethical conduct. The Notice of Hearing cites the wrong provision of the cited statute.

5. The allegations deemed proven in this matter constitute engaging in unprofessional conduct in violation of Minn. Stat. § 147.091, subd. 1(k). That clause of the statute defines unprofessional conduct to include any departure from or failure to conform to the minimal standards of acceptable and prevailing medical practice and states that actual injury to a patient need not be established. The jury determinations of negligence in failing to meet recognized medical standards in the diagnosis, care, and treatment of patients causing direct harm or injury to the patients are binding determinations of failure to conform to the minimal standards of prevailing medical practice. The numerous complaints against Respondent and facts determined during the investigation of this matter support that conclusion.

6. The allegations deemed proven in this matter constitute an inability to practice medicine with reasonable skill and safety to patients in violation of Minn. Stat. § 147.091, subd. 1(l).

7. As a result of the violations set forth in the prior Conclusions, the Board may take disciplinary action against Respondent in any of the forms set forth in Minn. Stat. § 147.141.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Board of Medical practice take disciplinary action against the medical license of Diane B. Humenansky, M.D.

Dated this \_\_\_\_\_ day of November 1996.

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STEVE M. MIHALCHICK  
Administrative Law Judge

Reported: No hearing.

## **NOTICE**

Under to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## **MEMORANDUM**

The allegations in this case, which have been deemed proven by Respondent's entry of a plea of no contest, and the stipulated documents in the record, show that Respondent is unable to conform to the minimum standards of acceptable and prevailing medical practice. Also, she is unable to recognize and admit to the shortcomings in her practice at the present time. The Board has before it the evaluation and recommendation of the Menninger Clinic which recommends that Respondent's practice be restricted to working in a structured environment and from working with Dissociative Identity Disorder patients, that she receive specified continuing medical education, and that she participate in psychotherapy. The harm that Respondent has caused patients is very substantial as had been demonstrated by the lawsuits against her. Her denial of any shortcomings and blaming of the lawsuits on those she calls the "perpetrators of childhood sexual assault" on the patients demonstrates the need to restrict and supervise her practice significantly until she has completed the education and therapy she requires.

S.M.M.